



OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 894

RIN 3206-AN91

FEDVIP: Extension of Eligibility to Certain Employees on Temporary Appointments and Certain Employees on Seasonal and Intermittent Schedules; Enrollment Clarifications and Exceptions for Changes in Enrollment

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is finalizing provisions to expand eligibility for enrollment in the Federal Employees Dental and Vision Insurance Program (FEDVIP) to additional categories of Federal employees, and certain Postal employees. This rule also updates the provisions on enrollment for active duty service members who become eligible for FEDVIP as uniformed service retirees pursuant to the National Defense Authorization Act of 2017 (fiscal year 2017 (FY17) NDAA). In addition, this rule adds exceptions to decrease an enrollment type and to cancel an enrollment for certain enrollees who may become eligible for dental and/or vision services from the Department of Veterans Affairs (VA). Lastly, the rule also includes technical corrections and clarifications to the part.

DATES: The final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Julia Elam, Supervisory Analyst, at julia.elam@opm.gov or (202) 606-1560.

SUPPLEMENTARY INFORMATION: OPM is modifying eligibility for coverage under the FEDVIP to certain Federal employees on temporary appointments and certain employees on seasonal and intermittent schedules who became eligible for Federal Employees Health Benefits (FEHB) coverage in 2015, which includes Postal employees on temporary appointments and seasonal and intermittent schedules. This rule also expands access to FEDVIP benefits to certain

firefighters on temporary appointments and intermittent emergency response personnel who became eligible for FEHB coverage in 2012. This rule also updates the provisions on enrollment for active duty service members who become eligible for FEDVIP as uniformed service retirees pursuant to the FY17 NDAA. In addition, this rule adds an exception to decrease an enrollment type and an exception to cancel an enrollment for certain enrollees who may become eligible for dental and/or vision services from the VA and who do not pay premiums on a pre-tax basis. Lastly, the rule also has technical corrections and clarifications to the part.

The authority to extend FEDVIP eligibility to additional groups of employees falls under OPM's regulatory authority at 5 U.S.C. 8962 and 5 U.S.C. 8992 to determine eligibility of employees based on the nature and type of employment. On October 21, 2021, OPM issued a proposed rule (86 FR 57764) to amend 5 CFR part 894. The proposed rule had a 60-day comment period during which OPM received a total of nine comments. This final rule adopts most of the rule as proposed and has amendments to §§ 894.101, 894.105, 894.201, 894.202, 894.203, 894.301, 894.302, 894.401, 894.403, 894.501, 894.502, 894.504, 894.507, 894.510, 894.602, 894.702, and 894.704. There are also technical corrections to §§ 894.511 and 894.601, and updates throughout 5 CFR part 894 that clarify certain provisions that apply to both Federal employees and employees of the United States Postal Service (USPS).

Responses to Comments on the Proposed Rule

OPM received seven comments from individual members of the public, Federal employees, Federal agencies, and an employee union on the proposed rule, and an additional two comments were not responsive to the subject matter discussed in the rule. The majority of commenters expressed support for the regulation regarding the expansion of FEDVIP to additional Federal employees and Postal employees. This rule will align benefits for similarly situated employees, add exceptions for decreasing enrollment type and cancelling an enrollment, and clarify existing provisions.

Two commenters expressed general concerns about Federal benefits programs. One commenter stated that instead of opening up FEDVIP to more employees, OPM should consider requiring FEHB plans to include basic preventive dental care and eye exams/glasses as preventive care saves money. Another commenter suggested discontinuing FEDVIP stating that it favors insurance companies. OPM declines these suggestions and notes that FEDVIP dental plans include preventive services such as routine services like exams and cleanings at no cost to enrollees when using in-network dentists. FEDVIP vision plans offer annual coverage for routine care such as vision exams and routine products such as vision lenses and frames. There are FEHB plans that offer some dental and vision benefits, and eligible enrollees have an option to enroll in FEDVIP for comprehensive dental and/or vision insurance.

Several commenters had similar comments and supported the regulation stating that the expansion is necessary and overdue. The commenters stated Federal employees performing the same job should not receive different benefits. They stated that expanding FEDVIP to more Federal employees will have a positive impact, including on FEDVIP rates, and will foster more competition in hiring and the ability to retain a strong workforce in the Federal Government. They also stated this could foster greater competition with the private sector. One of the commenters stated that all Federal employees eligible for FEHB should be able to receive dental and vision coverage and suggested that the FEHB Program should include basic dental and vision benefits with the option of choosing a plan with more coverage for more serious dental care.

Another commenter who supports the rule detailed its importance for wildland firefighters and discussed the detrimental health effects of wildfires such as eye and respiratory tract irritation, reduced lung function, bronchitis, exacerbation of asthma and heart failure, and premature death. The commenter also discussed the importance of firefighters for public safety and the need for the Federal Government to hire more wildland firefighters. The commenter stated expansion of FEDVIP to seasonal, temporary, and/or intermittent employees, including

firefighters, will allow the Federal Government to hire and retain a strong workforce that will overall benefit the public and the environment.

OPM appreciates the supportive comments about expanding FEDVIP to additional employees. In response to the comment that expanding FEDVIP will result in competitive rates for employees, OPM cannot estimate the impact on premium rates as we cannot predict the uptake of the eligible population. In response to the suggestion that FEHB plans should include basic dental and vision, OPM notes that is outside the scope of this rule and there are FEHB plans with dental and vision benefits which vary by plan.

OPM received several comments from a commenter in support of the proposed rule as it impacts non-career Postal employees as well as recommendations on the rule. The commenter supported the rule's proposal that newly eligible employees may enroll within 60 days of publication of the final rule, after the employing office notifies employees of their eligibility for FEDVIP. The commenter explained that the USPS normally uses 60 days to allow newly hired non-career employees to enroll in a non-career health benefit plan after they are hired. The commenter recommended that OPM authorize an enrollment procedure similar to the process that is used to enroll City Carrier Assistants in USPS's non-career health benefits health plan. OPM would like to clarify that authorization of a procedure is unnecessary, and that FEDVIP enrollment takes place through BENEFEDS, a secure enrollment website sponsored by OPM that allows eligible individuals to enroll or change enrollment in a FEDVIP plan.

The commenter also identified a possible ambiguity regarding eligibility as the preamble of the proposed rule states that certain Postal temporary employees and Postal employees on seasonal and intermittent schedules expected to work 130 hours per calendar month, for at least 90 days, would be eligible for FEDVIP. However, the proposed paragraph (e)(5) of 5 CFR 894.302 regarding the eligibility of temporary employees cross-referenced 5 CFR 890.102(j), a provision in the FEHB regulation stating that only non-Postal employees on temporary appointments, and non-Postal employees working on seasonal and intermittent schedules are

eligible for FEHB. We have modified the regulatory text throughout 5 CFR 894.302 and added paragraphs (e)(5) and (6), (f)(3), and (g)(2) to clarify that Postal employees on temporary appointments and those on seasonal and intermittent schedules are eligible for FEDVIP.

In addition, the preamble to the proposed rule included an estimate of Federal employees in the impacted categories that would become eligible for FEDVIP. However, there was not an estimate of the impacted categories of Postal employees who would become eligible. As of September 2022, OPM estimates 72,100 Federal employees in the impacted categories would become eligible for FEDVIP. As of fiscal year 2022, approximately 118,609¹ Postal employees in the impacted categories would become eligible for FEDVIP. This estimate of Postal employees is based on the category of Postal employees referred to as full-time non-career (sometimes referred to as pre-career) employees and generally corresponds to the category of employees affected by the modification of FEDVIP eligibility under this final rule.

Changes from the Proposed Rule

OPM has made several changes to this final rule regarding eligibility for Postal employees on temporary appointments and seasonal and intermittent schedules and technical corrections. First, we updated the List of Subjects in 5 CFR part 894 to remove the terms “Hostages, Iraq, Kuwait, and Lebanon” to update the topics currently in FEDVIP regulations. Second, the final rule updates 5 CFR 894.101 to clarify that the term “enrollee” also includes employees or annuitants of the USPS. Third, the proposed rule cross-referenced 5 CFR 890.102(j) in several paragraphs in § 894.302, which would inadvertently exclude Postal employees from eligibility for the FEDVIP modification. To correct this, the final rule in § 894.302 adds new paragraphs (e)(5) and (6), (f)(3), and (g)(2) to clarify that Postal employees on temporary appointments and seasonal and intermittent schedules are eligible for FEDVIP. Fourth, the final rule clarifies in 5 CFR 894.301(d) that employees in positions providing

¹ United States Postal Service, Fiscal Year 2022 Annual Report to Congress, available at <https://about.usps.com/what/financials/annual-reports/fy2022.pdf>.

emergency response services for wildland fire protection as described in 5 CFR 890.102(h), and employees performing similar types of emergency response services for whom, upon request by the employing agency, OPM granted eligibility, as described in 5 CFR 890.102(i), are eligible for FEDVIP. In § 894.403, the final rule adds paragraph (b)(6) to clarify that Postal Service employees who are not eligible for FEHB may not pay FEDVIP premiums on a pre-tax basis. This applies to Postal Service employees affected by the rule – generally non-career Postal employees (temporary Postal employees as well as certain Postal employees on seasonal and intermittent schedules).

The proposed rule proposed changing the term “service” to “Federal employment” in 5 CFR 894.501(c) to clarify that “service” refers to Federal employment. However, the final rule does not adopt this change and retains the original regulatory language since “service” refers to employment at both Federal agencies and USPS, and the clarification is not necessary. The proposed rule did add paragraph (h) to § 894.501 to clarify that an eligible individual may enroll within 60 days of the individual’s annuity or compensation being restored after having been terminated, and that proposed change is adopted.

In addition, the final rule clarifies inconsistencies in the preamble and regulatory text of the proposed rule regarding a decrease in enrollment type or cancellation of an enrollment because of eligibility for dental or vision benefits from the VA. The proposed rule had inconsistencies in whether an enrollee or family member had to only be eligible for dental or vision benefits from the VA, or also enroll in VA dental or vision benefits for the decrease in enrollment type or cancellation to apply. The final rule clarifies that the enrollee or family member must only be eligible for dental or vision benefits from the VA to decrease enrollment type under new paragraph (a)(3) of § 894.510 and to cancel an enrollment under § 894.602(c). OPM is using the broader term of eligibility since in certain circumstances, veterans may not be required to enroll in order to receive certain VA benefits.

The final rule also clarifies that under new paragraph (a)(3) of 5 CFR 894.510 that enrollees, identified in § 894.403(b), who pay premiums on a post-tax basis may decrease enrollment type if an eligible family member becomes eligible for VA dental or vision benefits. Under 5 CFR 894.510(a)(3), the enrollee must submit the request within 60 days after notification of eligibility for VA dental or vision benefits of a family member or TRICARE-eligible individual (TEI) family member. The rule also clarifies that cancelling an enrollment under § 894.602(c) due to an enrollee becoming eligible for VA dental or vision benefits applies to enrollees, identified in § 894.403(b), who do not pay premiums on a pre-tax basis. For enrollees requesting to cancel enrollment under § 894.602(c), the enrollee must submit the request within 60 days of notification of eligibility for VA dental or vision benefits. OPM is also clarifying that these exceptions are not qualifying life events (QLEs), but rather exceptions for this group of enrollees, namely veterans, and only applies to enrollees who do not pay premiums on a pre-tax basis. OPM must follow Internal Revenue Service rules in determining which events are QLEs, and these exceptions do not implicate enrollees eligible for premium conversion (pre-tax payment of premiums). Enrollees who are eligible for premium conversion cannot decrease enrollment type under the exception at § 894.510 or cancel enrollment mid-year.

The final rule does not include the proposed changes to § 894.512 to change “Federal Government” to “Federal employment” or “service” to “employment” as this clarification is not necessary. Additionally, the final rule also amends § 894.601(i) to only discuss when FEDVIP coverage stops for an enrollee or sponsor who cancels coverage because they are eligible for or enrolled in VA dental or vision benefits. The proposed rule at § 894.601(i) included language that is more appropriate for § 894.602 regarding the responsibility of a sponsor to notify family members of changes in enrollment, and the final rule describes this responsibility of a sponsor at § 894.602. An enrollee or sponsor requesting to cancel an enrollment under § 894.601(i) must submit the request within 60 days after notification of eligibility for VA dental or vision benefits. The final rule also clarifies that § 894.602(b), which allows cancellation due to

deployment to active military duty, not only applies to an employee and their spouse but also all enrollees, including an annuitant or their spouse. The final rule does not include the proposed change to § 894.704 to insert “Federal employment” in relation to where an individual may retire from and instead clarifies that this may also include the USPS in addition to the Federal Government.

The final rule also clarifies throughout 5 CFR part 894 that certain provisions that apply to Federal employees also apply to employees of the USPS. This clarification was needed since currently an employee of the USPS is included in the definition of “employee” only for purposes of subpart A.

The final rule also clarifies that the system of records notice for this collection is OPM Central-26 rather than OPM Central-1 as listed in the proposed rule.

Provisions of the Final Rule

Addition of Newly Eligible Groups

This final rule will allow newly eligible individuals to enroll themselves and cover their eligible family members in FEDVIP. Under current FEDVIP regulations at 5 CFR 894.302, Federal employees in certain positions are not eligible to enroll in FEDVIP. This final rule extends eligibility to enroll in FEDVIP to certain temporary Federal employees and certain Federal employees on seasonal and intermittent schedules who are eligible for the FEHB Program. Consistent with Internal Revenue Code section 4980H, OPM expanded eligibility to enroll in the FEHB Program to these categories of Federal employees who are expected to work 130 hours per month, for at least 90 days, at 79 FR 62325 (October 17, 2014). This final rule expands eligibility to enroll in FEDVIP to this same group of employees under 5 CFR part 894 and allows them to enroll in FEDVIP.

In addition, the rule allows certain temporary Postal employees as well as certain Postal employees on seasonal and intermittent schedules expected to work 130 hours per calendar

month, for at least 90 days, to enroll for FEDVIP coverage as the USPS does not offer separate dental and vision plans for these employees.

Current FEDVIP regulations do not allow certain firefighters on temporary appointments and intermittent emergency response personnel for wildland fire protection to enroll. These employees are distinct from the categories described above because they might not meet the requirement of being expected to work 130 hours per calendar month, for at least 90 days. In 2012, upon request by an employing agency, eligibility to enroll in the FEHB Program was extended to employees in positions that provide emergency response services for wildland fire protection, and to employees performing similar types of emergency response services if approved by OPM. This final rule similarly provides these employees eligibility to enroll in FEDVIP.

Enrollments for Newly Eligible Individuals

Enrollments for newly eligible individuals pursuant to this rule will be accepted during a 60-day period after the issuance of the final rule that begins when the employing office notifies employees of their eligibility to enroll in a FEDVIP plan. If a Federal or Postal employee is on a temporary appointment or seasonal or intermittent schedule and is expected to work or does work 130 hours per calendar month, for at least 90 days, then the individual is eligible to enroll upon notification by their employing office. If an employee is a firefighter or intermittent emergency response personnel, they are eligible upon notification of their employing office. Employing offices must determine eligibility of new and current employees and upon determining eligibility, promptly offer employees made eligible by this rule an opportunity to enroll in FEDVIP and coverage will become effective pursuant to 5 CFR 894.504.

Enrollment of Active Duty Service Members Who Experience a Status Change to Uniformed Services Retirees

This final rule clarifies when active duty service members who become uniformed services retirees may enroll in FEDVIP outside of open season. A sponsor on active duty

becomes eligible for FEDVIP as a TEI, pursuant to Public Law 108–496, when the individual becomes a uniformed services retiree. Under current regulations at 5 CFR 894.501(b), an individual may enroll within 60 days of becoming eligible. Under 5 CFR 894.504, the individual’s enrollment is effective the first day of the pay period following the one in which the Administrator receives the enrollment.

However, a sponsor on active duty who retires and becomes a TEI could experience a 30-day break in coverage if that individual enrolls when becoming eligible as a uniformed services retiree. OPM is revising § 894.501(e) and redesignating it as § 894.501(f) to allow these active duty service members who will experience a status change to a uniformed services retiree to enroll in FEDVIP. Such service members may enroll beginning 31 days before the service member loses other dental or vision coverage, and during an additional 60 days after becoming eligible to enroll. OPM is also amending 5 CFR 894.504(d) to make the effective date for these individuals enrolling outside of open season to be no earlier than the date the active duty service member lost other coverage.

Amendment of Current QLE, Additional Exceptions to Decrease Enrollment Type and Cancel Enrollment, and Technical Corrections

This final rule amends certain provisions in 5 CFR part 894 to clarify a current qualifying life event applies to all enrollees and adds exceptions for enrollees to decrease an enrollment type and cancel a FEDVIP enrollment. In 5 CFR 894.511, OPM amends the language to clarify the QLE allowing an enrollee to decrease an enrollment if a spouse who is enrolled becomes deployed to active military duty. Section 894.511(b) has been amended to use the term “enrollee” as defined in § 894.101 since it includes Federal employees, employees of the USPS, annuitants, compensationers, and TEIs. In addition, the rule adds an exception at new paragraph (a)(3) of § 894.510 for an enrollee, as specified in § 894.403(b), whose FEDVIP premiums are not paid on a pre-tax basis, to decrease an enrollment type if a covered family member becomes eligible for dental or vision benefits from the VA.

In § 894.601, OPM amends paragraph (a) to clarify that an employee of the USPS is included in the provision on when FEDVIP coverage stops after the individual is no longer eligible. In 5 CFR 894.601, OPM also adds a new paragraph (i) that addresses when FEDVIP coverage stops if an enrollee or sponsor is eligible to cancel an enrollment outside of open season. In 5 CFR 894.602, OPM adds an exception to the current rules on cancellation for an enrollee identified in § 894.403(b), who does not pay FEDVIP premiums on a pre-tax basis, to cancel their FEDVIP enrollment if the enrollee is determined to be eligible for dental or vision benefits through the VA. If the enrollee is a sponsor who meets one of the conditions in 5 CFR 894.309(a)(3)(iii) and cancels a self plus one or self and family enrollment in a FEDVIP dental plan, the sponsor must notify eligible family members about the change in enrollment. Then pursuant to § 894.811, a TEI family member can accept the responsibility to self-certify and enroll in a FEDVIP dental plan as a TEI certifying family member and cover other TEI family members.

Technical Corrections

In addition, this final rule includes technical corrections. These technical corrections include the following: incorporated capitalization and italicization of certain defined terms throughout 5 CFR part 894; updated the definition of stepchild in 5 CFR 894.101; amended 5 CFR 894.201 to use the more inclusive terminology of “enrollee” instead of the terms “employee” and “annuitant” since TEIs are also enrollees; removed 5 CFR 894.203 since the situations for changing a family member under a self plus one enrollment or changing to a self only enrollment are covered in 5 CFR 894.510 and 894.511; and amended 5 CFR 894.511 to use the more inclusive terminology of “enrollee” instead of the terms “employee,” “annuitant,” or “compensationner” since Postal employees and TEIs are also enrollees. This rule also incorporates italicization of defined terms in 5 CFR 894.502.

Expected Impact of Final Rule

While this rule expands the number of individuals who are potentially eligible for FEDVIP, OPM does not believe this regulation will have a large impact on the broader dental

and vision insurance markets. FEDVIP generally constitutes a smaller percentage of dental and vision insurance carrier's overall books of business. OPM has contracted with twelve dental carriers and five vision carriers to offer plans under FEDVIP. There are currently twenty-three dental plan options available across FEDVIP from these twelve dental carriers. Within the five vision carriers, there are currently ten vision plan options that are nationwide and internationally available to all potential enrollees.

As of September 2022, OPM estimates 72,100 Federal employees in the impacted categories would become eligible for FEDVIP. As of fiscal year 2022, approximately 118,609² Postal employees in the impacted categories would become eligible for FEDVIP. This estimate of Postal employees is based on the category of Postal employees referred to as full-time non-career (sometimes referred to as pre-career) employees and generally corresponds to the category of employees affected by the modification of FEDVIP eligibility under this final rule. In the proposed rule published on October 19, 2021, at 86 FR 57764, OPM sought comments on the following to supplement its analysis on the affected population:

1. How will the regulation impact changes to enrollment in FEDVIP?
2. How will the allowance of new categories of employees impact FEDVIP?

While there were no comments on how the regulation will impact changes to enrollment in FEDVIP, OPM did receive comments on expanding FEDVIP to allow new categories of employees. Several commenters stated that expanding FEDVIP to more Federal employees will have a positive impact, including on FEDVIP rates, and will foster more competition in hiring and the ability to maintain a strong workforce in the Federal Government. They also stated this could foster greater competition with the private sector. One commenter stated that instead of opening up FEDVIP to more employees, OPM should consider requiring FEHB plans to include basic preventive dental care and eye exams/glasses as preventive care saves money. OPM declines this suggestion and notes that FEDVIP dental plans include preventive services such as

² United States Postal Service, Fiscal Year 2022 Annual Report to Congress.

routine services like exams and cleanings at no costs to enrollees when using in-network dentists.

Due to data limitations, OPM is unable to estimate the newly eligible populations' enrollment uptake in FEDVIP. While this population is currently eligible for FEHB, OPM cannot predict their uptake of dental and vision benefits based upon their uptake in health insurance benefits. However, due to the limited number of employees newly eligible to enroll in FEDVIP under this regulation, OPM does not anticipate a measurable impact on the overall FEDVIP risk pool.

We expect that the newly eligible population has a lower income compared to other Federal employees enrolled in FEDVIP. For instance, the current starting salary for entry-level wildland firefighters is \$15 per hour.³ Further, temporary Federal employees and certain Federal employees on seasonal and intermittent schedules are expected to work 130 hours per calendar month, for at least 90 days, to enroll for FEDVIP, which may mean less pay. There may be significant pent-up demand for services, at least initially, because it is likely that these individuals did not have dental or vision coverage. A 2020 review published in the *Annual Review of Public Health* found that individuals who are considered low income have a higher rate of insufficient or no dental coverage.⁴ This leads to higher out-of-pocket costs for treatment, which is a deterrent for treatment. The same is true for vision care, with lack of access based on affordability, lack of transportation, and availability of optometrists, ophthalmologists, and other health professionals in close proximity to these individuals as some of the most common reasons explaining insufficient coverage.⁵ This in turn correlates with higher dental, vision, and other health care needs.

³ Government Accountability Office. (2022). *Barriers to Recruitment and Retention of Federal Wildland Firefighters*. Washington, DC. Retrieved from <https://www.gao.gov/assets/gao-23-105517.pdf>

⁴ Northridge M, Kumar A, Kaur R. Disparities in Access to Oral Health Care. *Annu Rev Public Health*. 2020, 41:513–535.

⁵ Solomon S, Shoge R, Ervin A, et al. Improving Access to Eye Care: A Systematic Review of the Literature. *Science Direct*. 2022, 129:1079-1080.

While OPM does not anticipate a significant overall impact on the FEDVIP risk pool, in the case of firefighters and other emergency personnel, there is additional occupational risk, especially when it comes to vision but also overall health. To the extent this is true, the need to cover more costly dental and vision procedures could lead to a very slight increase in average premiums. This in turn may lead to a very small number of those enrolled to disenroll because they do not want to pay for the increased premium. If this occurs, the effect of an increase in disenrollment in the program would be negligible because current FEDVIP enrollment is 20 times larger than the newly eligible group. Any increase in premium from occupational risk may be counteracted by the likelihood that this newly eligible population is younger (especially pre-career postal employees), which correlates with lower age-related dental, vision, and health care risk.

Other than the small distributional effects described above, the net effect of expanding eligibility should be positive for society. Enrollees are responsible for paying the entire premium and should therefore enroll only to the extent that their expected benefit outweighs the cost (premium). It should increase dental, vision, and overall health for this population if needs that have been neglected due to lack of coverage are going to be addressed. This, in turn, correlates with fewer sick days and increased productivity. The expansion of coverage also promotes parity with other Federal employees in dental and vision access for employees with higher occupational risk, such as wildland firefighters and other emergency responders who may experience harmful impacts of fire and smoke on their vision and health.

Executive Orders 13563 and 12866, Regulatory Review

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting

flexibility. A regulatory impact analysis must be prepared for major rules with economically significant effects of \$200 million or more in any one year. This rule has been designated as a “significant regulatory action,” under Executive Order 12866.

Regulatory Flexibility Act

OPM certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*) requires rules (as defined in 5 U.S.C. 804) to be submitted to Congress before taking effect. The Office of Management and Budget’s (OMB’s) Office of Information and Regulatory Affairs has determined this is not a major rule as defined by the Congressional Review Act (5 U.S.C. 804(2)).

Federalism

OPM examined this rule in accordance with Executive Order 13132, Federalism, and determined that it will not have any negative impact on the rights, roles and responsibilities of state, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject

to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB Control Number.

This rule involves an OMB approved collection of information subject to the PRA for the FEDVIP Enrollment System, known as BENEFEDS, OMB Control Number: 3206-0272.

The public reporting burden for this collection is estimated to average 7.19 minutes for a respondent to submit an enrollment, including time for reviewing education and support, but may not include time for reviewing a plan and specific benefits, which is a decrease in burden response due to increased system efficiency. The total burden hour estimate for this form is 76,828 hours. The systems of record notice for this collection is OPM/Central-26, “FEDVIP, FLTCIP, and FSAFEDS Records,” available at <https://www.federalregister.gov/documents/2022/06/21/2022-13216/privacy-act-of-1974-system-of-records>.

List of Subjects in 5 CFR Part 894

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Military personnel, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

Accordingly, OPM amends 5 CFR part 894 as follows:

PART 894—FEDERAL EMPLOYEES DENTAL AND VISION INSURANCE PROGRAM

1. The authority citation for part 894 continues to read as follows:

Authority: 5 U.S.C. 8962; 5 U.S.C. 8992; Subpart C also issued under section 1 of Pub. L. 110-279, 122 Stat. 2604 (2 U.S.C. 2051); and Sec. 894.601(b) also issued under Pub. L. 116-92, 133 Stat. 1198 (5 U.S.C. 8956 note).

Subpart A - Administration and General Provisions

2. Amend § 894.101 by revising the definitions of “Annuitant,” “Enrollee,” “Premium conversion,” and “Stepchild” to read as follows:

§ 894.101 Definitions.

* * * * *

Annuitant means an individual defined at 5 U.S.C. 8901(3). Generally, the term means a former *employee* or *employee* of the United States Postal Service who is entitled to an immediate annuity or a disability annuity under a retirement system established for *employees*. The term also generally includes those receiving a survivor annuity due to the death of an *employee* or *employee* of the United States Postal Service or annuitant (survivor annuitants) and those receiving compensation from the Office of Workers’ Compensation Programs (compensationers). The term does not include former *employees* who retire with a deferred annuity under 5 U.S.C. 8413, or former spouses of annuitants.

* * * * *

Enrollee means the individual in whose name the FEDVIP enrollment is carried. There is one FEDVIP enrollment for each *enrollee* in a dental plan, and/or in a vision plan and that enrollment may include *family members* who may be covered by the enrollment. The term *enrollee* includes individuals eligible to enroll based upon a status described at subpart C of this part, who enroll and are covered. With respect to the Federal workforce, an *enrollee* generally means an *employee* or *annuitant*. With respect to the United States Postal Service, an *enrollee* generally means an *employee* or *annuitant* of the United States Postal Service. With respect to a *TEI*, an *enrollee* generally means the *sponsor* who is a *TEI* with respect to a FEDVIP plan; but if the *sponsor* is not a *TEI*, or for FEDVIP dental benefits if the *sponsor* defined at § 894.804 is not

enrolled and meets a condition at § 894.309(a)(3)(iii), then enrollee means the *TEI certifying family member*. A *TEI former spouse* may be an enrollee only for a self-only FEDVIP vision plan. An *enrollee* may enroll and elect a FEDVIP dental and/or vision plan, option, and type of enrollment, except as provided at § 894.309.

* * * * *

Premium conversion means the payment of FEDVIP premiums by an *employee* or United States Postal Service employee using pre-tax dollars. See § 892.102 of this chapter for a discussion of how *premium conversion* works.

* * * * *

Stepchild means your spouse's child born within or outside marriage or their adopted child. The child of your spouse shall continue to be considered your stepchild after your divorce from your spouse or the death of your spouse so long as the child continues to live with you in a regular parent-child relationship.

* * * * *

3. Amend § 894.105 by revising paragraphs (b) and (c) to read as follows:

§ 894.105 Who may correct an error in my enrollment?

* * * * *

(b) OPM may order correction of an administrative error or other noncompliance with FEDVIP rules in this part if it receives evidence that it would be against equity (fairness) and good conscience not to order the correction. Corrections are made at the discretion of OPM and are not subject to review.

(c) If the correction gives you or a *family member* retroactive coverage, you must pay the premiums for all periods of the retroactive coverage. Retroactive premiums will not be on a pre-tax basis (they are not subject to premium conversion).

Subpart B - Coverage and Types of Enrollment

4. Revise § 894.201 to read as follows:

§ 894.201 What types of enrollments are available under FEDVIP?

FEDVIP has three *types of enrollment*:

- (a) Self only, which covers only the *enrollee*;
- (b) Self plus one, which covers the *enrollee* plus one *family member*; and
- (c) Self and family, which covers the *enrollee* and all *family members*.

5. Amend § 894.202 by revising the section heading to read as follows:

§ 894.202 I am an enrollee; if I enroll for self plus one, may I decide which family member to cover?

* * * * *

§ 894.203 [Removed]

6. Remove §894.203.

§ 894.204 [Redesignated as § 894.203]

7. Redesignate § 894.204 as § 894.203.

8. Revise newly redesignated § 894.203 to read as follows:

§ 894.203 May I be enrolled in more than one dental or vision plan at a time?

You may be enrolled or be covered in a FEDVIP dental plan and a separate FEDVIP vision plan at the same time. But no one may enroll or be covered as a family member in a FEDVIP dental or vision plan if he or she is covered under another person's FEDVIP dental or vision self plus one or self and family enrollment, except as provided under § 890.302(a)(2) of this chapter, with respect to dual enrollments. If two parents of a TEI child are entitled to be a sponsor, they must choose one parent to be the child's sponsor. Dual enrollments of TEIs are permitted as provided under § 890.302(a)(2) of this chapter as applicable to TEI family members.

Subpart C - Eligibility

9. Amend § 894.301 by:

- a. Revising the section heading.

b. In paragraph (b), removing the word “or” at the end of the paragraph.

c. In paragraph (c)(2), removing the period at the end of the paragraph and adding “; or” in its place.

d. Adding paragraph (d).

The revision and addition read as follows:

§ 894.301 Am I eligible to enroll in FEDVIP as an employee?

* * * * *

(d) You are an *employee* in a position identified by OPM that provides emergency response services for wildland fire protection pursuant to § 890.102(h) of this chapter; or you are an *employee* pursuant to § 890.102(i) of this chapter, under which, upon request by the employing agency, OPM may grant eligibility to employees performing similar types of emergency response services. OPM may limit the coverage of intermittent *employees* to the periods of time during which they are in a pay status pursuant to § 890.102(i) of this chapter.

10. Amend § 894.302 by:

a. Revising the introductory text.

b. Removing the undesignated paragraph following the introductory text.

c. In paragraph (e)(3):

i. Removing “§ 316.401 and § 316.403” and adding “§§ 316.401 and 316.403” in its place.

ii. Removing the word “or” at the end of the sentence.

d. In paragraph (e)(4), removing the period at the end of the sentence and adding a semicolon in its place.

e. Adding paragraphs (e)(5) and (6).

f. Revising paragraphs (f) and (g).

g. Adding paragraphs (l) and (m).

The revisions and additions read as follows:

§ 894.302 What is an excluded position?

Excluded positions are described in 5 U.S.C. 8901(1)(i), (ii), (iii), and (iv) and § 890.102(c) of this chapter, except that employees of the United States Postal Service, District of Columbia courts, and employees identified in § 890.102(c)(9)(i) and (ii) of this chapter are not excluded positions. You are in an excluded position if you are:

* * * * *

(e) * * *

(5) You are an *employee* working on a temporary appointment, and if you meet the conditions in § 890.102(j) of this chapter, you are eligible to enroll in a FEDVIP plan upon notification by your employing office; or

(6) You are an employee of the United States Postal Service working on a temporary appointment, and if you meet the conditions of § 890.102(j) of this chapter except the requirement of being a non-Postal employee, you are eligible to enroll in a FEDVIP plan upon notification by your employing office.

(f) Expected to work fewer than six months in each year. *Exceptions:* You are eligible if:

(1) You receive an appointment of at least one year's duration as an Intern under § 213.3402(a) of this chapter. To qualify, you must be expected to be in a pay status for at least one-third of the total period of time from the date of the first appointment to the completion of the work-study program.

(2) You are an *employee* working on a seasonal schedule of less than 6 months in a year, and if you meet the conditions in § 890.102(j) of this chapter, you are eligible to enroll in a FEDVIP plan upon notification by your employing office.

(3) You are an employee of the United States Postal Service working on a seasonal schedule of less than 6 months in a year, and if you meet the conditions in § 890.102(j) of this chapter except the requirement of being a non-Postal employee, you are eligible to enroll in a FEDVIP plan upon notification by your employing office.

(g)(1) An intermittent *employee* (a non-full-time *employee* without a prearranged regular tour of duty). *Exception:* If you are an *employee* working on an intermittent schedule and if you meet the conditions in § 890.102(j) of this chapter you are eligible to enroll in a FEDVIP plan upon notification by your employing office.

(2) An intermittent employee of the United States Postal Service (a non-full-time employee without a prearranged regular tour of duty). *Exception:* If you are an employee of the United States Postal Service working on an intermittent schedule, and if you meet the conditions of § 890.102(j) of this chapter except the requirement of being a non-Postal employee, you are eligible to enroll in a FEDVIP plan upon notification by your employing office.

* * * * *

(l) For purposes of this subpart and as defined in § 890.102(j)(4) of this chapter, *qualifying leave without pay hours* means hours of leave without pay for purposes of taking leave under the Family and Medical Leave Act for performance of duty in the Uniformed Services under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301 *et seq.*, for receiving medical treatment under Executive Order 5396 (July 7, 1930), and for periods during which workers compensation is received under the Federal Employees Compensation Act, 5 U.S.C. chapter 81.

(m) Once an *employee* or an employee of the United States Postal Service is properly enrolled under paragraphs (e) through (g) of this section and meets the applicable conditions in § 890.102(j) of this chapter, enrollment will not be terminated, regardless of his or her actual work schedule or employer expectations in subsequent years, unless the *employee* or employee of the United States Postal Service separates from service, receives a new appointment (in which case eligibility will be determined by the rules in this part applicable to the new appointment), or otherwise meets one of the circumstances for termination or cancellation of coverage in §§ 894.601 and 894.602.

Subpart D - Cost of Coverage

11. Amend § 894.401 by revising paragraph (a) to read as follows:

§ 894.401 How do I pay premiums?

(a) *Employees* and employees of the United States Postal Service pay premiums through payroll allotments.

* * * * *

12. Amend § 894.403 by:

a. Revising paragraphs (a) and (b)(1).

b. In paragraphs (b)(3) and (4), removing the period at the end of the paragraphs and adding a semicolon in its place.

c. In paragraph (b)(5), removing the period at the end of the paragraph and adding “; or” in its place.

d. Adding paragraph (b)(6).

The revision and addition read as follows:

§ 894.403 Are FEDVIP premiums paid on a pre-tax basis?

(a) Your FEDVIP premiums are paid on a pre-tax basis (called premium conversion) if you are an active *employee* or *employee* of the United States Postal Service, your salary is sufficient to make the premium allotments, and your agency will be able to make pre-tax allotments.

(b) * * *

(1) You are an *employee* or employee of the United States Postal Service in nonpay status or an *employee* or employee of the United States Postal Service whose salary is not high enough to make premium allotments, or your agency is unable to make pre-tax allotments;

* * * * *

(6) You are an employee of the United States Postal Service not eligible to enroll in the FEHB Program under part 890 of this chapter.

Subpart E - Enrollment and Changing Enrollment

13. Amend § 894.501 by:

- a. Revising paragraphs (b) and (d).
- b. Redesignating paragraphs (e), (f), and (g) as paragraphs (f), (g), and (i), respectively.
- c. Adding new paragraph (e).
- d. Revising newly redesignated paragraph (g).
- e. Adding paragraph (h).
- f. Revising newly redesignated paragraph (i).

The revisions and additions read as follows:

§ 894.501 When may I enroll?

* * * * *

(b) Within 60 *days* after you first become eligible as:

(1) A new *employee* or employee of the United States Postal Service;

(2) A previously ineligible *employee* or employee of the United States Postal Service who transfers to a covered position;

(3) A new survivor *annuitant*, if not already covered under FEDVIP;

(4) An *employee* or an employee of the United States Postal Service working on a temporary appointment as stated in § 894.302(e)(5); an *employee* or employee of the United States Postal Service working on a seasonal schedule as stated in § 894.302(f); or an *employee* or employee of the United States Postal Service working on an intermittent schedule as stated in § 894.302(g);

(5) An *employee* in a position identified by OPM that provides emergency response services for wildland fire protection pursuant to § 890.102(h) of this chapter; or an *employee* performing similar types of emergency response services pursuant to § 890.102(i) of this chapter for whom OPM grants eligibility to enroll based on a request by the employing agency. In granting eligibility requests, OPM may limit the coverage of intermittent employees to the periods of time during which they are in a pay status;

(6) A *TEI certifying family member*, but only if, on your first date of eligibility to enroll, your *sponsor* is not a *TEI* or is deceased, or for FEDVIP dental coverage, if your *sponsor* is defined at § 894.309(a)(3)(iii); or

(7) A *TEI former spouse*;

* * * * *

(d) From 31 days before you or an eligible family member loses other dental or vision coverage to 60 days after a QLE that allows you to enroll;

(e) For a *sponsor* who becomes eligible as a *TEI*, from 31 days before you lose other dental or vision coverage as an active duty service member to 60 days after you become eligible to enroll as a uniformed services retiree who is a *TEI*;

* * * * *

(g) Within 60 days after returning to Federal employment or employment with the United States Postal Service after being on leave without pay if you did not have Federal dental or vision coverage prior to going on leave without pay, or your coverage was terminated or canceled during your period of leave without pay;

(h) Within 60 days of your *annuity* or *compensation* being restored after having been terminated; or

(i) For a *TEI*, within 60 days of your uniformed services pay or uniformed services retirement pay being restored after having been reduced, forfeited, or terminated.

14. Amend § 894.502 by revising paragraphs (b) through (e) to read as follows:

§ 894.502 What are the Qualifying Life Events (QLEs) that allow me to enroll or become covered in FEDVIP outside of open season?

* * * * *

(b) Your *annuity* or compensation is restored after having been terminated;

(c) You return to pay status as an *employee* or employee of the United States Postal Service after being on leave without pay due to deployment to active military duty;

(d) You are an *employee* or employee of the United States Postal Service and you get married;

(e) You return to Federal employment or employment of the United States Postal Service after being on leave without pay if you did not have Federal dental or vision coverage prior to going on leave without pay, or your coverage was terminated or canceled during your period of leave without pay;

* * * * *

15. Amend § 894.504 by:

- a. Redesignating paragraphs (d) and (e) as paragraphs (e) and (f).
- b. Adding new paragraph (d).
- c. Revising newly redesignated paragraph (f).

The addition and revisions read as follows:

§ 894.504 When is my enrollment effective?

* * * * *

(d) Outside of open season, if you are an active duty service member who becomes a uniformed services retiree (*TEI*) and enroll or are enrolled 31 days before you lose other dental or vision coverage, your enrollment is effective no earlier than the date you lost other coverage.

* * * * *

(f)(1) A belated open season enrollment or change is effective retroactive to the date it would have been effective if you had made a timely enrollment or request for a change.

(2) Any belated enrollment or change outside of open season that goes beyond the allowable 60-day enrollment timeframe is effective retroactive to the 1st *day* of the pay period following the one in which you became newly eligible or the date of your *QLE*.

(3) You must pay any retroactive premiums due to a belated enrollment or request for a change.

16. Amend § 894.507 by revising paragraph (a)(3) to read as follows:

§ 894.507 After I’m enrolled, may I change from one dental or vision plan or plan option to another?

(a) * * *

(3) For *employees* or employees of the United States Postal Service, when you return to Federal or Postal employment after being on leave without pay if you did not have Federal dental or vision coverage prior to going on leave without pay, or your coverage was terminated or canceled during your period of leave without pay.

* * * * *

17. Amend § 894.510 by:

- a. Revising paragraph (a) introductory text.
- b. In paragraph (a)(1), removing the word “or” at the end of the paragraph.
- c. In paragraph (a)(2), removing the comma at the end of the paragraph and adding “; or” in its place.
- d. Adding paragraph (a)(3).

The addition reads as follows:

§ 894.510 When may I decrease my type of enrollment?

(a) You may decrease your *type of enrollment*:

* * * * *

(3) You are an *enrollee*, and under § 894.403(b) your FEDVIP premiums are not paid on a pre-tax basis, and your *family member* or *TEI family member* becomes eligible for dental or vision benefits from the Department of Veterans Affairs. An *enrollee* must submit the request within 60 days after notification that your *family member* or *TEI family member is eligible for* dental or vision benefits from the Department of Veterans Affairs.

* * * * *

18. Amend § 894.511 by revising paragraph (b) to read as follows:

§ 894.511 What are the QLEs that are consistent with decreasing my type of enrollment?

* * * * *

(b) You are an *enrollee* and your spouse deploys to active military service.

Subpart F - Termination or Cancellation of Coverage

19. Amend § 894.601 by revising paragraph (a) and adding paragraph (i) to read as follows:

§ 894.601 When does my FEDVIP coverage stop?

(a) If you no longer meet the definition of an eligible *employee* as set forth in § 894.101 or *annuitant*, or *TEI*, your FEDVIP coverage stops at the end of the pay period in which you were last eligible.

* * * * *

(i) If you are an *enrollee* or *sponsor* and cancel your enrollment pursuant to § 894.602(c), your cancellation will become effective at the end of the pay period that you submit your request.

20. Revise § 894.602 to read as follows:

§ 894.602 May I cancel my enrollment at any time?

Generally, an *enrollee* may only cancel an enrollment during an open season. *Exceptions:* You may cancel your dental and/or vision enrollment if:

(a) You are an *enrollee* and transfer to an eligible position with a Federal agency that provides dental or vision coverage with 50 percent or more employer-paid premiums and you enroll in that program.

(b) You are an *enrollee* and you or your spouse deploy to active military duty.

(c) You are an *enrollee* or *sponsor* who does not pay premiums on a pre-tax basis, identified at § 894.403(b), and during the course of your enrollment, you become eligible for Department of Veterans Affairs (VA) dental or vision benefits. If you cancel a self plus one or self and family enrollment, as *sponsor*, you must notify your *family members* of changes in your enrollment pursuant to § 894.815. You will still be the *sponsor* but no longer the *enrollee*, and pursuant to § 894.811, your family members will only be eligible for FEDVIP dental coverage

since you are a *TEI-D* who is not enrolled in FEDVIP and receives VA dental services and meets one of the conditions in § 894.309(a)(3)(iii). Upon cancellation of the enrollment, pursuant to § 894.811, a *TEI family member* can accept the responsibility to self-certify and enroll in a FEDVIP dental plan as a *TEI certifying family member* and cover other *TEI family members*.

(d) Cancellations under this section will become effective at the end of the pay period that you submit your request.

Subpart G - Annuitants and Compensationers

21. Revise § 894.702 to read as follows:

§ 894.702 May I participate in open season and make changes to my enrollment as an annuitant or compensationer?

Yes. *Annuitants* and *compensationers* may participate in open season and make enrollment changes under the same circumstances as active *employees* or employees of the United States Postal Service.

22. Amend § 894.704 by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 894.704 What happens if I retire and then come back to work for the Federal Government or the United States Postal Service?

(a) If you have FEDVIP coverage as an *annuitant*, and you become reemployed in an eligible position in Federal service or United States Postal Service, you must contact the *Administrator* so it can send the request for allotments to your agency so your agency can start making the allotments from your pay.

(b) If you did not enroll in FEDVIP coverage as an *annuitant* and become reemployed in an eligible Federal position or United States Postal Service, you have 60 *days* to enroll in FEDVIP.

* * * * *

§§ 894.101, 894.301, 894.302, 894.308, 894.404, 894.405, 894.406, 894.510, 894.601, 894.704, and 894.901 [Amended]

23. In addition to the amendments above to 5 CFR part 894, in the table below, for each section indicated in the left column, remove the text indicated in the middle column from wherever it appears, and add in its place the text indicated in the right column:

Section	Remove	Add
§ 894.101 introductory text	enrollee	<i>enrollee</i>
§ 894.101, definition of “Acquiring an eligible child”, paragraph (4)	enrollee	<i>enrollee</i>
§ 894.101, definition of “Acquiring an eligible child”, paragraph (6)	enrollee’s	<i>enrollee’s</i>
§ 894.101, definition of “Acquiring an eligible child”, paragraph (6)	enrollee	<i>enrollee</i>
§ 894.101, definition of “Child”, paragraph (1)(iii)	enrollee	<i>enrollee</i>
§ 894.101, definition of “Covered position”	employee	<i>employee</i>
§ 894.101, definition of “Dependent”	enrollee	<i>enrollee</i>
§ 894.101, definition of “Employee”	employee additionally	<i>employee additionally</i>
§ 894.101, definition of “Employee”	employee of the District	<i>employee of the District</i>
§ 894.101, definition of “Enrollment reconsideration”	Administrator’s	<i>Administrator’s</i>
§ 894.101, definition of “Recognized natural child”	enrollee	<i>enrollee</i>
§ 894.101, definition of “Regular parent-child relationship”	enrollee	<i>enrollee</i>
§ 894.301(c)(1)	employee	<i>employee</i>
§ 894.302(d)	employees	<i>employees</i>
§ 894.302(k)(1) and (2)	employee	<i>employee</i>
§ 894.308(a) and (b) introductory text	enrollee	<i>enrollee</i>
§ 894.308(b)(2)	enrollee’s	<i>enrollee’s</i>
§ 894.308(b)(3)	enrollee	<i>enrollee</i>
§ 894.404	employees	<i>employees</i>
§ 894.405(a)	Administrator	<i>Administrator</i>
§ 894.405(c)	enrollee	<i>enrollee</i>
§ 894.406(c)	enrollee	<i>enrollee</i>
§ 894.510(c)(1)	type of enrollment	<i>type of enrollment</i>
§ 894.601(b)	enrollee	<i>enrollee</i>

§ 894.704(c)	employee	<i>employee</i>
§ 894.901(a) and (b)	enrollees	<i>enrollees</i>

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